ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MCI WORLDCOM, INC.	)	CC Docket No. 00-45
	)	
Petition for Expedited Declaratory Ruling Regarding the Process for Adoption of Agreements Pursuant to Section 252(i) of the Communications Act and Section 51.809 of the Commission's Rules	)	

COMMENTS OF
WILLIAMS LOCAL NETWORK, INC.

Williams Local Network, Inc. ("WLNI"), by its attorneys and pursuant to the Commission's March 16, 2000 Public Notice in the above-captioned proceeding,[1] hereby submits its comments in support of the Petition for Expedited Declaratory Ruling (the "Petition") filed by MCI WorldCom, Inc. ("MCI WorldCom").[2] The following is respectfully shown.

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[1] Public Notice, Pleading Cycle Established for Comments on the Revised Petition of MCI WorldCom, Inc. for Declaratory Ruling Regarding the Procedures for Adoption of Agreements Pursuant to Section 252(i) of the Communications Act and Section 51.809 of the Commission's Rules, DA 00-592 (released March 16, 2000).

[2] WLNI is a subsidiary of Williams Communications, Inc. ("Williams"), whose long-haul fiber optic network presently consists of more than 26,000 miles in the U.S. WLNI will extend Williams' fiber network into the local network, creating on-network sites in the top 50 markets by the end of 2000. The extension of Williams' network to high-density buildings, carrier hotels and selected central offices will shorten service delivery intervals by eliminating bottlenecks caused by the limited availability of high-capacity local loops and will support the local access requirements of carriers. WLNI's access service also will provide a platform for deploying a variety of new broadband services in the local market.

I. Preliminary Statement

MCI WorldCom has requested the issuance of a declaratory ruling, pursuant to Section 1.2 of the Commission's rules, to remove uncertainty concerning a telecommunications carrier's ability to exercise its rights under Section 252(i) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). Specifically, MCI WorldCom has asked the Commission to declare that:

> (1) a requesting carrier's right under Section 252(i) of the Act and Section 51.809(a) of the Commission's rules to effectively adopt interconnection agreements previously approved by a State commission is not subject to State commission approval;
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> (2) a requesting carrier's adoption is effective on the date of notice of adoption to the incumbent local exchange carrier ("ILEC");
>
> (3) when an ILEC challenges an adoption pursuant to Section 51.809(b) of the Commission's rules, it can be excused from complying with the adopted terms only when it promptly carries its burden of proving that the costs of providing interconnection to the requesting carrier are greater than the costs of providing it to the carrier that originally negotiated the agreement; that the proposed adoption is technically infeasible; or that (in the "pick and choose" context) the carrier has failed to adopt legitimately related terms and conditions;
>
> (4) unless a state commission affirmatively determines that an ILEC has satisfied its burden of proof with respect to the criteria concerning cost and/or technical feasibility set forth in Section 51.809(b), or with respect to claims of legitimately related terms, the effective date of the agreement is retroactive to the date of the notice of adoption;
>
> (5) when an ILEC raises claims of increased costs or technical feasibility, or claims regarding legitimately related terms, a state commission must establish an expedited process for a determination on the ILEC's showing; and
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> (6) during the pendency of such claims, an ILEC must honor the adoption of terms other than those being challenged.

Petition at 1-2.

WLNI generally supports each of these requests. However, WLNI believes that the best solution to existing problems of procedural bottlenecks created by ILECs and inconsistent

treatment by State commissions would be to have the requesting carrier notify the State commission directly, rather than the ILEC, of the requesting carrier's intent to adopt an approved agreement. WLNI also offers an alternative framework for procedures implementing carriers' Section 252(i) rights. This framework incorporates most of the rulings requested by MCI WorldCom, as well as certain approaches currently in use by some States, and, like the MCI WorldCom requests, requires no extraordinary action by the Commission.

II. A Commission Ruling Is Necessary to Establish Uniform Practices for Adopted Agreements

WLNI agrees with MCI WorldCom that there is a pressing need for the Commission to establish clear guidelines for the adoption of approved interconnection agreements. MCI WorldCom has compiled an extensive record revealing the disparities among the various States' treatment of adopted agreements. This record demonstrates the obstacles carriers encounter when they seek to adopt an already approved agreement, including no established time periods for State action, with approval times ranging from days to nearly one year;[3] requirements that the parties jointly submit an already approved agreement;[4] and even the establishment of public comment periods.[5] These obstacles have arisen due to a lack of federal guidance.

Moreover, the ILECs are able to manipulate these inconsistencies to further their competitive advantage in the local market. Typically, a requesting carrier begins the adoption process by notifying an ILEC of the carrier's desire to exercise its Section 252(i) rights. The

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[3] *See* MCI WorldCom Petition at 9 (in California, uncontested portions of an adopted agreement take effect upon notice of adoption) and at 5, 7 (in Illinois and New Jersey, the State commissions may take up to 9 months to act on an adopted agreement).

[4] Id. at 5 (Illinois, Ohio).

[5] Id. at 6 (Indiana).

incumbent's response – the timing of which, although required to be "without unreasonable delay,"[6] is solely within the incumbent's control – may not be received for several weeks, and even then generally includes an attempt by the incumbent to modify, "clarify", or add to the terms and conditions of the requested agreement.[7] Thus, notwithstanding ILECs' unambiguous obligations under Section 252(i), they routinely manipulate the adoption process in a manner that results in further delays and additional costs to the requesting carrier.

WLNI suggests that the Commission promptly issue a ruling setting forth the following simple, straightforward three-step process to govern the adoption of approved agreements:

> (1) A telecommunications carrier that seeks to adopt an approved agreement must give the State commission written notice of that fact, along with a copy of the requested agreement, certified as complete and accurate, and proof that the carrier has been certified by the State to the extent necessary to provide services under the requested agreement (the "Adoption Notice"). The Adoption Notice must include proof of service on the ILEC. The Adoption Notice is effective upon receipt by the State.

No valid justification exists for the existing practice whereby the requesting carrier first notifies the ILEC of the carrier's desire to adopt an agreement.[8] The practice allows ILECs to control the timing of when an agreement is executed and submitted to the State. Moreover, ILECs view the receipt of an adoption demand letter as an open invitation to renegotiate the requested agreement. Direct notification to the State of a carrier's desire to opt into an approved agreement eliminates weeks or months of delay.

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[6] 47 C.F.R. § 51.809(a).

[7] *See* MCI WorldCom Petition, n. 4.

[8] Indeed, at least one state (Arkansas) has recognized this and has deemed an agreement effective upon notice of adoption to the state commission. *See* MCI WorldCom Petition at 8.

(2) If the Adoption Notice states that the requesting carrier elects to adopt an approved agreement in its entirety, rather than (1) opting into any "individual interconnection, service, or network element arrangement" contained in one or more approved agreements,[9] or (2) "picking and choosing" provisions from among various approved agreements, then no further action by the State is required and the agreement is deemed approved upon receipt by the State of the Adoption Notice.

This is consistent with MCI WorldCom's request for a ruling that a competing carrier may adopt interconnection agreements previously approved by a State commission without further State commission approval. This clarification is necessary to eliminate a delaying tactic whereby an ILEC responds to a request to adopt an approved agreement with a separate agreement that attempts to alter provisions of requested agreement. This tactic inevitably leads to negotiations over the "replacement" agreement and delays the submission of the adopted agreement to the State commission. Where a requesting carrier seeks to adopt an approved agreement in its entirety, the only changes permitted should be those necessary to make clear that a new party is stepping into the shoes of one of the original parties. Thus, changing the name of the party, changing relevant names and contact information for purposes of notice and billing provisions of an agreement, and stating the effective and termination dates, should be the only permitted changes. These changes can be accomplished after the agreement becomes effective, and subject to State oversight.

(3) An ILEC may invoke its rights under Section 51.809(b) within ten days of being served with the Adoption Notice. The ILEC still has the burden of proving, pursuant to Section 51.809(b), that (1) the costs of providing the

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[9] Section 252(i) of the Act requires local exchange carriers to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." The Commission's rules implementing Section 252(i) provide that ILECs "must make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement." 47 C.F.R. § 51.809(a).

> requested interconnection, service, or element to the requesting carrier are greater than the costs of providing it to the carrier that originally negotiated the agreement, (2) provision of the requested interconnection, service, or element to the requesting carrier is not technically feasible, or (3) that (in the pick and choose context), the competing carrier has failed to adopt legitimately related terms and conditions. As MCI WorldCom suggests, a State commission should promptly establish an expedited process for a determination on the ILEC's evidence. Moreover, again as MCI WorldCom proposes, while the State is considering the ILEC's claims, the ILEC must honor the adoption of terms other than those being challenged.

An ILEC is required to make available approved agreements "without unreasonable delay". The Commission should clarify that this requirement extends to an ILEC's Section 51.809(b) rights. Ten days is a reasonable period of time for an ILEC to challenge an adoption under Section 51.809(b), and is consistent with timetables established by California and Texas.[10] Having the Adoption Notice go directly to the State, rather than to the ILEC, will compel the ILEC to respond more assuming it has a valid basis for doing. Also, as MCI WorldCom requests, the Commission should clarify that an ILEC may refuse to comply with the adopted terms only when it "promptly" carries its burden of proof under Section 51.809(b).

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[10] See MCI WorldCom Petition at 8 (California allows an ILEC 15 days to contest adoption) and 9 (Texas allows an ILEC 5 days).

III. The Requested Commission Ruling Promotes the Pro-Competitive Goals of the Telecommunications Act

Neither the Act nor the Commission's rules authorize a State to approve adoption of an already approved agreement.[11] The Act provides only that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." 47 U.S.C. § 252(e)(1) (emphasis added). Such an agreement is deemed effective if the state has not approved or rejected it within 90 days (in the case of a negotiated agreement) or 30 days (in the case of an arbitrated agreement). 47 U.S.C. 252(e)(4). An agreement adopted under Section 252(i) is neither a negotiated nor arbitrated agreement, and thus is not subject to the Act's requirement of state approval. This is particularly true of an agreement that is adopted in its entirety, rather than through the pick-and-choose method.

The Commission already has acknowledged that an "adopted" agreement is not within the scope of the Section 252(e) approval requirement.[12] In the *Local Competition First Report and Order*, the Commission stated that carriers seeking to exercise their rights under Section 252(i) should not have "to undergo a lengthy negotiation and approval process pursuant to section 251 [of the Act] before being able to utilize the terms of a previously approved agreement."[13] The Commission further stated that carriers adopting approved agreements may do so on an expedited basis, and that "this interpretation further Congress's stated goals of

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[11] *See* MCI WorldCom Petition at 14.

[12] *Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities*, 14 FCC Rcd 12530 (1999), at para. 20.

[13] 11 FCC Rcd 15499, 16141 (1996).

opening up local markets to competition and permitting interconnection on just, reasonable, and nondiscriminatory terms...." Id.

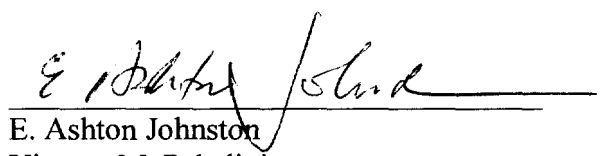
Competition in the local market is increasing. The fastest, most efficient means of entering the market is by adopting an approved agreement. Unfortunately, requesting carriers are facing obstacles that effectively reduce the advantages of adopting approved agreements which Congress intended to put in place when it enacted Section 252(i). This is simply due to the fact that ILECs retain too much control over the timing of new entrants into the market, through their control over the adoption process. The requested rulings are entirely consistent with Congressional intent and with the Commission's interpretation of the goals of the Telecommunications Act. They will speed the time to market for new entrants by eliminating delay and expense unnecessarily created by ILECs and by waiting for the approval of an already approved agreement.

V. Conclusion

For the foregoing reasons, WLNI respectfully requests that the Commission grant on an expedited basis, and consistent with WLNI's foregoing comments, the Petition of MCI WorldCom.

Respectfully submitted,

WILLIAMS LOCAL NETWORK, INC.

By: 

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March 31, 2000

CERTIFICATE OF SERVICE

I, Angelia Vann-Clare, hereby certify that I have on this 31st day of March, 2000, caused a true and correct copy of the foregoing Comments of Williams Local Network, Inc. to be delivered by hand or by first-class United States mail, postage prepaid, to the following:

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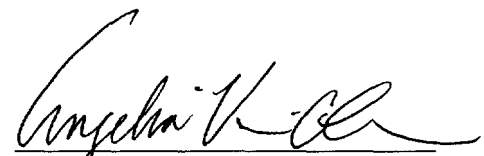

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